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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

In re STEPHEN SCHRADER on Habeas
Corpus.

C065085

(Super. Ct. No.
C13999)

Inmate Stephen Schrader pleaded guilty to second degree murder in 1995. On July 8, 2008, the Board of Parole Hearings (Board) conducted a hearing and found Schrader unsuitable for parole. Schrader petitioned the superior court for a writ of habeas corpus. The superior court granted the petition, finding that the Board's determination was not supported by "some evidence."

The Attorney General appeals, challenging that portion of the trial court's order directing the Board to find Schrader suitable for parole unless new evidence of his conduct or change in his mental state since 2008 supports a determination that he

poses an unreasonable risk of danger to society if released on parole. In other words, the scope of this appeal is limited to whether the trial court erred in directing the Board to find Schrader suitable for parole absent new evidence.

We agree with the Attorney General that pursuant to the California Supreme Court's recent opinion in *In re Prather* (2010) 50 Cal.4th 238 (*Prather*), it was error for the superior court to direct the Board to find Schrader suitable for parole absent new evidence. Instead, the superior court should have simply remanded the matter back to the Board for another hearing without placing unnecessary limitations on the scope of the Board's review. We will modify the superior court's order so that it complies with *Prather, supra*, 50 Cal.4th 238.

FACTS AND PROCEDURAL BACKGROUND

Because the sole issue on appeal is one of procedure, our recitation of the facts and procedural background is appropriately limited.

In 1995, Schrader pled guilty to murder in the second degree and was sentenced to 15 years to life in prison.

In August 2006, Schrader attended his initial parole consideration hearing. The Board found that he was not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. He was given a four-year denial.

On May 6, 2008, the superior court issued an order reversing the Board's four-year denial and ordering that Schrader be given a parole hearing within 60 days.

Accordingly, Schrader appeared for a subsequent hearing on July 8, 2008.

Schrader testified about his involvement in the murder. Schrader had been partying with several younger individuals at his parents' vacation home when a female acquaintance told him she had quarreled with her boyfriend (the victim). Knowing that another of his partying companions had said that he wanted to confront and "beat up" the victim, Schrader went to the victim's house and asked the victim to come over and look at some stereo equipment. When they arrived at the house, Schrader led the victim downstairs into the garage where Schrader's companion beat the victim with a metal pipe. Schrader made no attempt to stop the attack. He said later that he froze with fear and soon ran out of the garage.

Once upstairs, Schrader urged everyone to leave. Schrader and the attacker loaded the victim's body into Schrader's vehicle, drove to an isolated area, and dumped the body in a canyon.

The Board told Schrader he "should be commended for the good things [he has] done while in custody," including having received "exceptional marks" on work assignments, having "great participation" in substance abuse programs and plans for parole and employment.

But the Board found the "positive aspects of [Schrader's] behavior do not outweigh the factors of unsuitability in our opinion." In the Board's view, Schrader would pose an unreasonable risk of danger to society or threat to society if

released from prison. "First, we're looking at the commitment offense. The offense was carried out in an especially cruel and callous manner" and there "are strong indications that this assault was planned by the three individuals," including Schrader, who were lying in wait for the victim.

In a separate decision, the Board found that it is not reasonable to expect that parole will be granted at a hearing during the following two years because the Board found Schrader was "dispassionate" during and after the murder, he "did nothing to intercede," and "seem[ed] like [he was] calm . . . afterwards." The Board also expressed doubt concerning Schrader's "insight" about the crime, "how much of it is you really don't remember, or if, if there was more involvement there. I just, it's hard to believe the actions, especially afterwards. The calculated steps that you took afterwards."

After the Board found Schrader unsuitable for parole in 2008, Schrader filed a petition for writ of habeas corpus in the superior court challenging both the denial of parole and the issuance of a two-year denial.

The superior court found that the Board's decision that Schrader was unsuitable for parole and remained a danger to public safety was not supported by "some evidence" and granted Schrader's petition for a writ of habeas corpus.

The superior court reasoned that the Board's decision to deny parole was based on the immutable factors of the commitment offense, which the Board found was especially cruel and callous; that Schrader had a prior conviction of domestic violence; that

Schrader was on probation when the murder was committed; and, at age 31, he allowed younger individuals to party at his house with the use of alcohol and drugs in the days leading up to the murder.

The superior court concluded the Board's decision lacked "an explicit articulation of a rational nexus' between the factors that led the Board to deny parole and 'the central issue of current dangerousness when considered in light of the full record.' It is not a question of weighing the positive aspects against factors of unsuitability; the legal requirement is that the factors establish unsuitability 'if, and only if, those circumstances are probative to the determination that a prisoner remains a danger to the public.' ([*In re Lawrence* (2008) 44 Cal.4th 1181,] 1212.) The Board has not articulated a link between the factors it considered in denying parole and the issue of [Schrader]'s current dangerousness to the public.

[¶] Additionally, the Board failed to articulate how the cited unsuitability factors support the determination that it is not reasonable to expect that parole will be granted at a hearing during the following two years."

The court directed the Board to vacate its decision of July 8, 2008, and to "conduct a new parole suitability hearing within 90 days of the finality of this ruling. At that hearing, the Board is directed to find Petitioner Stephen Schrader suitable for parole unless new evidence of his conduct or a change in his mental state subsequent to his 2008 parole hearing

supports a determination that he currently poses an unreasonable risk of danger to society if released on parole."

The Attorney General appealed the decision of the superior court and petitioned for writ of supersedeas to stay enforcement of that ruling. We stayed the superior court's order pending a determination on the writ of supersedeas.

DISCUSSION

Penal Code section 3041, subdivision (a) provides that for prisoners sentenced to indeterminate prison terms, a panel of two or more commissioners or deputy commissioners of the Board shall meet with the inmate one year prior to an inmate's minimum eligible parole release date and shall normally set a parole release date in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public.

"[T]he Board must grant parole unless it determines that public safety requires a lengthier period of incarceration for the individual because of the gravity of the offense underlying the conviction. (Pen. Code, § 3041, subd. (b).)" (*In re Lawrence, supra*, 44 Cal.4th at p. 1204, italics omitted.) Title 15, section 2281 of the California Code of Regulations sets out as general guidelines "several circumstances relating to unsuitability for parole--such as the heinous, atrocious, or cruel nature of the crime, or an unstable social background; and suitability for parole--such as an inmate's rehabilitative efforts, demonstration of remorse, and the mitigating

circumstances of the crime." (*In re Lawrence, supra*, 44 Cal.4th at pp. 1202-1203, fns. & italics omitted.)

Parole release decisions are essentially discretionary and "entail the Board's attempt to predict by subjective analysis" the inmate's suitability for release on parole. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 655.) Such a prediction requires analysis of individualized factors on a case-by-case basis. (*Ibid.*) In exercising its discretion, the Board "must consider all relevant statutory factors, including those that relate to postconviction conduct and rehabilitation." (*In re Lawrence, supra*, 44 Cal.4th at p. 1219.) "Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of the [Board]. . . . [T]he precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the [Board]" (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 677.)

Judicial review of the Board's decision is deferential. "Only a modicum of evidence" is required to support the Board's decision. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 677.) "As long as the [Board]'s decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to ascertaining whether there is some evidence in the record that supports the [Board]'s decision." (*Ibid.*) In this regard, however, the relevant inquiry is whether "some evidence" supports the determination "that the inmate constitutes a

current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1212; accord, *In re Shaputis* (2008) 44 Cal.4th 1241, 1254.)

After the trial court granted Schrader's habeas corpus writ, the California Supreme Court in *In re Prather*, *supra*, 50 Cal.4th 238 considered the appropriate remedy when, as here, a reviewing court has determined that the Board's denial of parole is not supported by some evidence. The Attorney General contends on appeal that the order at issue in this case fails to comport with *Prather*. We agree.

Prather assessed the propriety of remedies fashioned by the appellate courts in two cases after the Board's parole unsuitability findings for two prisoners serving indeterminate life sentences, Michael B. Prather and Miguel Molina, were overturned because they lacked some evidence. In *Prather's* case, the appellate court "did not simply direct the Board to conduct a new hearing, but instead directed the Board 'to find Mr. Prather suitable for parole unless, within 30 days of the finality of this decision, the Board holds a hearing and determines that new and different evidence of Mr. Prather's conduct in prison subsequent to his 2007 parole hearing supports a determination that he currently poses an unreasonable risk of danger to society if released on parole.'" (*Prather*, *supra*, 50 Cal.4th at p. 246, fn. omitted.) In *Molina's* case, the appellate court determined that "[a]ny further delay is unwarranted," and it "remanded the matter to the trial court

with directions to 'in turn remand to the Board with instructions to release Molina on parole in accordance with conditions set by the Board.'" (*Prather, supra*, 50 Cal.4th at p. 248.) The high court "granted review in these two cases to determine the proper scope of an order directed to the [Board] when a reviewing court concludes that a decision to deny parole by the Board is not supported by 'some evidence' that a prisoner remains a current threat to public safety." (*Prather, supra*, 50 Cal.4th at p. 243.)

The Supreme Court held that "an order [such as the one issued in *Prather's* case] precluding the Board from considering all relevant and reliable evidence when making a parole-suitability determination improperly circumscribes the statutory mandate that the Board consider *all* relevant statutory factors when making its decision, and is incompatible with our directive in [*In re Lawrence, supra*, 44 Cal.4th 1181] that evidence of suitability and unsuitability must be considered in light of the full record before the Board." (*Prather, supra*, 50 Cal.4th at pp. 253, 255-256.) Generally, the Court reasoned, under the doctrine of separation of powers, "it is improper for a reviewing court to direct the Board to reach a particular result or to consider only a limited category of evidence in making a suitability determination" and prior decisions have held that "a proper order after a grant of habeas corpus relief should direct the Board to 'proceed in accordance with due process of law[.]'" (*Id.* at pp. 253-254.) An order, such as the one issued in *Prather's* case, that purports to limit the Board's consideration

to only "new evidence" or events subsequent to the last suitability hearing necessarily prevents the Board from considering all relevant factors. (*Id.* at p. 255.)

Accordingly, "the court should avoid issuing directives that improperly limit the Board's statutory authority to review and evaluate the full record--including evidence previously considered by the Board, as well as additional evidence not presented at prior parole hearings." (*Prather, supra*, 50 Cal.4th at p. 258, italics omitted.)

We agree that the superior court's order granting Schrader's petition for habeas corpus should be modified to comply with the decision in *Prather*.

DISPOSITION

The order granting Schrader's petition for writ of habeas corpus is modified to (1) delete the portion of the order directing the Board to find Schrader suitable for parole absent new evidence, and (2) provide that the Board shall conduct a new parole suitability hearing within 90 days of the finality of this ruling. The order is affirmed as modified.

In the interests of justice, this decision shall be final as to this court five days after it is filed. (Cal. Rules of Court, rule 8.387(b)(3)(A); *In re Aguilar* (2008) 168 Cal.App.4th 1479, 1492.)

Upon finality of this opinion, the stay previously issued by this court on May 28, 2010 is vacated.

MAURO, J.

We concur:

RAYE, P. J.

ROBIE, J.